

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 62611.000278	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US03/30483	International filing date (day/month/year) 29 September 2003 (29.09.2003)	Priority date (day/month/year) 27 September 2002 (27.09.2002)
International Patent Classification (IPC) or national classification and IPC IPC(7): A61K 31/20 and US Cl.: 514/560, 558		
Applicant MARTEK BIOSCIENCES CORPORATION		
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>4</u> sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of ___ sheets.</p> <p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the report</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input checked="" type="checkbox"/> Non-establishment of report with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>		
Date of submission of the demand 26 April 2004 (26.04.2004)	Date of completion of this report 22 December 2004 (22.12.2004)	
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer <i>Valerie Bell-Harris</i> Donna Jagoe Telephone No. (571) 272-1600	

Form PCT/IPEA/409 (cover sheet)(July 1998)

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US03/30483

I. Basis of the report

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed.
- ☒ the description:
pages 1-28 _____ as originally filed
pages NONE _____, filed with the demand
pages NONE _____, filed with the letter of _____.
- ☒ the claims:
pages 29-31 _____, as originally filed
pages NONE _____, as amended (together with any statement) under Article 19
pages NONE _____, filed with the demand
pages NONE _____, filed with the letter of _____.
- ☒ the drawings:
pages 1 _____, as originally filed
pages NONE _____, filed with the demand
pages NONE _____, filed with the letter of _____.
- ☐ the sequence listing part of the description:
pages NONE _____, as originally filed
pages NONE _____, filed with the demand
pages NONE _____, filed with the letter of _____.

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The question whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 7,11-16,18 and 20-25

because:

- ☐ the said international application, or the said claim Nos. _____ relate to the following subject matter which does not require international preliminary examination (*specify*):

- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 7,11-16,18 and 20-25 are so unclear that no meaningful opinion could be formed (*specify*):

Because they are improper multiple dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a)

- ☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.

- ☐ no international search report has been established for said claims Nos. _____

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

- ☐ the written form has not been furnished or does not comply with the standard.
☐ the computer readable form has not been furnished or does not comply with the standard.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/US03/30483**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. STATEMENT**

Novelty (N)

Claims 1-6, 8-10, 17 and 19

YES

Claims NONE

NO

Inventive Step (IS)

Claims NONE

YES

Claims 1-6, 8-10, 17 and 19

NO

Industrial Applicability (IA)

Claims 1-6, 8-10, 17 and 19

YES

Claims NONE

NO

2. CITATIONS AND EXPLANATIONS

Claims 1-6, 8-10, 17 and 19 lack an inventive step under PCT Article 33(3) as being obvious over Berge (U.S. Patent No. 6,365,628 B1). The claims are drawn to a method for improving glucose control, treating diabetes, and treating a patient at risk of developing metabolic syndrome comprising administering DHA and optionally a second pharmaceutical agent such as an anti-diabetic agent to the patient. Berge teaches administration of novel fatty acid analogues to treat diabetes and reduce the concentration of glucose in the blood, and treat multi-metabolic syndrome. It does not teach DHA specifically. It is prima facie obvious to substitute DHA, a fatty acid analog for the fatty acid analogues of Berge motivated by the teaching of Berge that fatty acid analogues, such as tetradecylthioacetic acid are successful in treatment of metabolic syndrome and diabetes. It does not teach co-administration with other known anti-diabetic agents. It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art.